

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

THE STATE OF OHIO, ex rel. DAVE YOST,  
OHIO ATTORNEY GENERAL,

and

THE UNITED STATES OF AMERICA,

Plaintiffs,

v.

NORFOLK SOUTHERN RAILWAY COMPANY and  
NORFOLK SOUTHERN CORPORATION,

Defendants/Third-Party Plaintiffs

Civil Action No. 4:23CV517

4:23CV675

Hon. John R. Adams

**DEFENDANTS' RULE 26(a) INITIAL DISCLOSURES**

Pursuant to Federal Rule of Civil Procedure 26(a), Defendants Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "Norfolk Southern") provide the following initial disclosures to Plaintiffs.

**INITIAL DISCLOSURES AND RESERVATIONS OF RIGHTS**

These initial disclosures are based on information reasonably available to Norfolk Southern as of the date they were prepared. Accordingly, Norfolk Southern expressly reserves the right to clarify, alter, amend, modify, or supplement the information contained in these initial disclosures as appropriate based on further evaluation of facts and evidence in its possession and as it obtains additional information, in accordance with the Federal Rules of Civil Procedure and the Local Rules.

By making these disclosures, Norfolk Southern does not represent it is identifying every individual, document, or tangible thing possibly relevant to the Complaint and Amended Complaint. Rather, these disclosures represent a good faith effort to identify information Norfolk Southern reasonably believes may be relevant to its defenses to the Complaints, based on information reasonably available to Norfolk Southern at this time.

These initial disclosures do not constitute a waiver of any objections Norfolk Southern may have, now or in the future, to any discovery in this action, and the submission of these disclosures does not constitute an admission or concession that any discovery is necessary or appropriate.

Norfolk Southern expressly does not waive attorney-client privilege, work product protection, or any other applicable privilege or protection through these disclosures. Norfolk Southern expressly reserves its right to object on proper grounds to any discovery request relating to the subject matter of these disclosures, including without limitation to object based on attorney-client privilege; attorney work-product protection; any other applicable privilege or protection under international, foreign, federal, or state law; relevance; competency; hearsay; immateriality; overbreadth; and undue burden or harassment.

Norfolk Southern expressly reserves the right to identify or call as witnesses other individuals in addition to those identified herein, including without limitation those identified by Plaintiffs in their initial disclosures or during discovery, and to identify additional documents, if it discovers that such individuals have or might have knowledge of matters relevant to this action or that such additional documents are relevant to this action.

Norfolk Southern expressly reserves the right to identify or call expert witnesses in accordance with Federal Rule of Civil Procedure 26(a)(2).

**Rule 26(a)(1)(A)(i) Disclosure**

The following individuals may have discoverable information that Norfolk Southern may use to support its defenses, unless the use would be solely for impeachment. All employees of Norfolk Southern identified below may be contacted only through undersigned counsel. The following list should not be interpreted to be an admission that any of the identified individuals will have discoverable information.

**A. Norfolk Southern**

<b>Name</b>	<b>Contact</b>	<b>Subject Matter</b>
Steven Aufdenkampe	Contact only through Norfolk Southern's counsel of record	Environmental monitoring
Kraig Barner	Contact only through Norfolk Southern's counsel of record	Derailment investigation; emergency response to derailment
Jacob Bilthuis	Contact only through Norfolk Southern's counsel of record	Derailment investigation
Cris Burch	Contact only through Norfolk Southern's counsel of record	Management of hazardous materials
Troy Carpenter	Contact only through Norfolk Southern's counsel of record	Environmental monitoring
Geoffrey Craker	Contact only through Norfolk Southern's counsel of record	Emergency response to derailment; operation and inspection of Train 32N
Scott Deutsch	Contact only through Norfolk Southern's counsel of record	Management of hazardous materials; emergency response to derailment; decision to perform controlled release
Robert Dickson	Contact only through Norfolk Southern's counsel of record	Wayside detectors
Evan Drahnak	Contact only through Norfolk Southern's counsel of record	Emergency response to derailment
Mark Dudle	Contact only through Norfolk Southern's counsel of record	Emergency response to derailment; decision to perform controlled release; environmental monitoring
Chad Edwards	Contact only through Norfolk Southern's counsel of record	Management of hazardous materials; emergency response to derailment

<b>Name</b>	<b>Contact</b>	<b>Subject Matter</b>
Brent Emerson	Contact only through Norfolk Southern's counsel of record	Track maintenance and restoration
Michael Fabery	Contact only through Norfolk Southern's counsel of record	Advanced train control center; wayside detectors
Michael Anthony Faison*	Contact only through Norfolk Southern's counsel of record	Operation of Train 32N
David Gooden	Contact only through Norfolk Southern's counsel of record	Train operations; emergency response to derailment
Scott Gould	Contact only through Norfolk Southern's counsel of record	Management of hazardous materials; derailment site investigation; decision to perform controlled release
Jared Hopewell	Contact only through Norfolk Southern's counsel of record	Wayside detectors; response to derailment
Floyd Hudson	Contact only through Norfolk Southern's counsel of record	Derailment site investigation; decision to perform controlled release
Chris Hunsicker	Contact only through Norfolk Southern's counsel of record	Environmental monitoring
Daniel Hunt	Contact only through Norfolk Southern's counsel of record	Environmental monitoring
Javon T. Jordan*	Contact only through Norfolk Southern's counsel of record	Operation of Train 32N
Sean Kennedy	Contact only through Norfolk Southern's counsel of record	Mechanical inspections; derailment
Shannon Mason	Contact only through Norfolk Southern's counsel of record	Train build and operations
Crystal McNeely	Contact only through Norfolk Southern's counsel of record	Environmental monitoring
Adam Motsinger	Contact only through Norfolk Southern's counsel of record	Environmental monitoring
Jason Myers	Contact only through Norfolk Southern's counsel of record	Advanced Train Control Center
Bryan Naranjo	Contact only through Norfolk Southern's counsel of record	Environmental monitoring
David Patten	Contact only through Norfolk Southern's counsel of record	Management of hazardous materials
Gary Rambo	Contact only through Norfolk Southern's counsel of record	Advanced Train Control Center
Jon Retting	Contact only through Norfolk Southern's counsel of record	Management of hazardous materials
Bryan Salley	Contact only through Norfolk Southern's counsel of record	Environmental monitoring

<b>Name</b>	<b>Contact</b>	<b>Subject Matter</b>
Josiah Saxe	Contact only through Norfolk Southern's counsel of record	Train and track restoration; derailment site investigation
Thomas Schnautz	Contact only through Norfolk Southern's counsel of record	Wayside detectors; Advanced Train Control Center
David Schoendorfer	Contact only through Norfolk Southern's counsel of record	Response to derailment; management of hazardous materials; environmental monitoring
Robert Scoble	Contact only through Norfolk Southern's counsel of record	Environmental monitoring
Brian Shanks	Contact only through Norfolk Southern's counsel of record	Management of hazardous materials
Alan Shaw	Contact only through Norfolk Southern's counsel of record	Derailment response
Jon Simpson	Contact only through Norfolk Southern's counsel of record	Management of hazardous materials; emergency response to derailment
Joseph Spadone	Contact only through Norfolk Southern's counsel of record	Track maintenance and restoration
Kevin Stauffer*	Contact only through Norfolk Southern's counsel of record	Operation of Train 32N
Corey Veal	Contact only through Norfolk Southern's counsel of record	Derailment response; safety procedures
James Wade	Contact only through Norfolk Southern's counsel of record	Derailment response
Jamie Williams	Contact only through Norfolk Southern's counsel of record	Mechanical inspections; derailment response
Nathan Williams	Contact only through Norfolk Southern's counsel of record	Environmental monitoring
Paul Williams	Contact only through Norfolk Southern's counsel of record	Management of hazardous materials; emergency response to derailment
Darrell Wilson	Contact only through Norfolk Southern's counsel of record	Response to derailment; community engagement
Kristin Wong	Contact only through Norfolk Southern's counsel of record	Community engagement
Robert Wood	Contact only through Norfolk Southern's counsel of record	Management of hazardous materials; emergency response to derailment; decision to perform controlled release

An asterisk (\*) indicates an employee of Norfolk Southern Railway Company. No asterisk indicates an employee of Norfolk Southern Corporation.

**B. Plaintiff-Related Parties**

<b>Name</b>	<b>Contact</b>	<b>Subject Matter</b>
Amber Bellamy, United States Fish & Wildlife	Unknown	Natural resource damages assessment
Ralph Dollhopf, United States Environmental Protection Agency	Unknown	Derailment response; environmental sampling
Mike Eberle, Ohio Environmental Protection Agency	Unknown	Derailment response; environmental sampling
Rick Hackley, United States Environmental Protection Agency Region 5	Unknown	Derailment response; environmental sampling
Rich Henry, United States Environmental Protection Agency	Unknown	Environmental sampling; natural resource damages assessment
James Justice, United States Environmental Protection Agency	Unknown	Derailment response; environmental sampling
Jack Kelly, United States Environmental Protection Agency Region 3	Unknown	Derailment response; environmental sampling
Michelle Kerr, United States Environmental Protection Agency Region 5	Unknown	Derailment response; environmental sampling
Amy Klei, Ohio Environmental Protection Agency	Unknown	Derailment response; environmental sampling
Kurt Kollar, Ohio Environmental Protection Agency	Unknown	Derailment response; environmental sampling
Andy McGuire, United States Environmental Protection Agency	Unknown	Derailment response; environmental sampling
Paul Ruesch, United States Environmental Protection Agency Region	Unknown	Derailment response; environmental sampling

Name	Contact	Subject Matter
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Anne Vogel, Ohio Environmental Protection Agency	Unknown	Derailment response; environmental sampling
Bill Zawiski, Ohio Environmental Protection Agency	Unknown	Natural resource damages assessment
Ohio Department of Natural Resources Representative	Unknown	Derailment response; environmental sampling
Additional officials and individuals from federal, state, and local governmental agencies and offices involved in response to derailment and subsequent events	Unknown	Response to derailment; controlled release; environmental sampling; EPA unilateral administrative order

### C. Third Party Defendants

Name	Contact	Subject Matter
GATX Corporation Corporate Representative	Unknown	Ownership and maintenance of derailed rail cars
General American Marks Company Corporate Representative	Unknown	Ownership and maintenance of derailed rail cars
Oxy Vinyls LP Corporate Representative	Unknown	Ownership and maintenance of derailed rail cars
Trinity Industries Leasing Company Corporate Representative	Unknown	Ownership and maintenance of derailed rail cars
Steve Smith, Oxy Vinyls LP	Unknown	Derailment response
Karenanne Stegmann, Oxy Vinyls LP	Unknown	Derailment response
Paul Thomas, Oxy Vinyls LP	Unknown	Derailment response

**D. Other Parties**

<b>Name</b>	<b>Contact</b>	<b>Subject Matter</b>
Arcadis U.S. Inc. Corporate Representative	Contact through Norfolk Southern's counsel of record	Environmental sampling
CTEH Corporate Representative	Contact through Norfolk Southern's counsel of record	Environmental sampling
EnviroScience, Inc. Corporate Representative	Contact through Norfolk Southern's counsel of record	Natural resources
Explosive Service International Corporate Representative	Contact through Norfolk Southern's counsel of record	Controlled release
HEPACO Corporate Representative	Contact through Norfolk Southern's counsel of record	Emergency response to derailment
Pennsylvania Department of Environmental Protection Representative	Unknown	Derailment response; environmental sampling
Specialized Professional Services, Inc. Corporate Representative	Contact through Norfolk Southern's counsel of record	Emergency response; controlled release
Specialized Response Solutions Corporate Representative	Contact through Norfolk Southern's counsel of record	Controlled release
Stantec Consulting Services Inc., Corporate Representative	Contact through Norfolk Southern's counsel of record	Environmental sampling



Name	Contact	Subject Matter
Peggy Clark, Columbiana County	Unknown	Response to derailment; environmental sampling
Trent Conaway, Village of East Palestine	Unknown	Response to derailment, controlled release
Keith Drabick, Village of East Palestine Fire Department	Unknown	Response to derailment; controlled release
Additional third-party contractors and subcontractors involved in response to derailment and subsequent events	Unknown	Response to derailment; environmental sampling
Additional officials and individuals from federal, state, and local governmental agencies and offices involved in response to derailment and subsequent events	Unknown	Response to derailment; controlled release; environmental sampling; EPA unilateral administrative order

**Rule 26(a)(1)(A)(ii) Disclosure**

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(ii) and subject to the qualifications stated above, and based on information reasonably available, Norfolk Southern identifies the following categories of documents, electronically stored information, or tangible things in its possession, custody, or control that it may use to support its defenses, unless such use is solely for impeachment. Such categories of documents, electronically stored information, and tangible things (or copies thereof) are located at the offices of Norfolk Southern or Norfolk Southern's counsel. Norfolk Southern makes these disclosures without waiving any arguments it may have concerning the relevance or admissibility of, or the proper weight to be accorded to, any of the information contained in the documents described. Norfolk Southern reserves the right to assert a claim of privilege or immunity and to withhold from production any documents, whether or not included below, that are protected from discovery by the attorney-client privilege,

work-product immunity, or any other privilege or immunity. As discovery is ongoing, Norfolk Southern reserves the right to amend these disclosures to the extent necessary to identify additional categories of documents that may relate to information relevant to Norfolk Southern's defenses.

- Documents and electronically stored information concerning the ownership, operation, maintenance, inspection, and repair of derailed cars in the consist of Train 32N on February 3, 2023.
- Documents and electronically stored information concerning Norfolk Southern's response to the derailment of Train 32N, including the emergency response, decision to perform controlled release, environmental testing, and Norfolk Southern's communications with government agencies and the public.
- Documents and electronically stored information provided to and/or received from the Environmental Protection Agency pursuant to the February 27, 2023 Unilateral Administrative Order governing response actions.
- Documents and electronically stored information concerning Norfolk Southern's safety procedures with respect to Train 32N.
- Documents and electronically stored information concerning the shipping and management of hazardous materials on Train 32N.
- Documents and electronically stored information concerning Norfolk Southern's emergency response training and planning.

**Rule 26(a)(1)(A)(iii) Disclosure**

Norfolk Southern seeks an order from the Court requiring the Third-Party Defendants to pay their fair and equitable share of CERCLA response costs and other costs Norfolk Southern

incurred as a result of Third-Party Defendants' conduct through the date of judgment, including pre-judgment interest. The total CERCLA response costs and other costs, and Third-Defendants' fair and equitable share of those costs, are not yet known.

**Rule 26(a)(1)(A)(iv) Disclosure**

Subject to the above reservation of rights, please note that Norfolk Southern has purchased certain insurance covering legal liabilities for bodily injury and property damage to third parties. This insurance provides coverage above \$75 million and below \$800 million (\$1.1 billion for specific perils) per occurrence and/or policy year. Norfolk Southern is willing to produce documents sufficient to identify such insurance agreements, subject to the terms of the protective order entered by the court.

Dated: July 12, 2023

WILMER CUTLER PICKERING  
HALE AND DORR LLP

McMAHON DeGULIS LLP

/s/ Davina Pujari

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\* *Pro hac vice*

*Counsel for Defendants and Third-Party Plaintiffs  
Norfolk Southern Corporation and Norfolk Southern Railway Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 12, 2023, I caused a copy of the foregoing to be filed with the Clerk of the Court using the Court's CM/ECF electronic filing system, which will provide electronic notice to all counsel of record.

/s/ Davina Pujari  
Davina Pujari (admitted *pro hac vice*)  
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